

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL JOSEPH MCDONNELL,

Defendant.

No. CR05-4051-MWB

**ORDER ACCEPTING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION REGARDING
DEFENDANT'S GUILTY PLEA**

I. INTRODUCTION AND BACKGROUND

On April 13, 2005, an indictment was returned against defendant Michael Joseph McDonnell, charging defendant with conspiring to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. § 846, and with possessing with intent to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). On May 6, 2005, defendant appeared before United States Magistrate Judge Paul A. Zoss and entered a plea of guilty to Count of One of the indictment. At that time defendant made an oral motion to dismiss Count Two of the indictment on the ground that it contained a fatal defect-the grand jury failed to allege that the offense charged in Count Two occurred in the Northern District of Iowa. On May 6, 2005, Judge Zoss filed a Report and Recommendation in which he recommends that defendant's guilty plea be accepted and that defendant's oral motion to dismiss Count Two be granted and that Count Two be dismissed without prejudice. No objections to Judge Zoss's Report and Recommendation were filed. The court, therefore, undertakes the necessary review of Judge Zoss's recommendation to accept defendant's plea in this case.

II. ANALYSIS

Pursuant to statute, this court's standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's Report and Recommendation on dispositive motions and prisoner petitions, where objections are made, as follows:

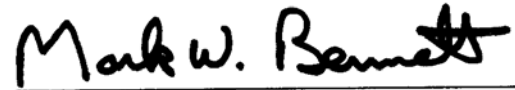
The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

In this case, no objections have been filed, and it appears to the court upon review of Judge Zoss's findings and conclusions, that there is no ground to reject or modify them. Therefore, the court **accepts** Judge Zoss's Report and Recommendation of May 6, 2005, and accepts defendant's plea of guilty in this case to Count One of the indictment. The court further orders that Count Two be dismissed without prejudice.

IT IS SO ORDERED.

DATED this 7th day of June, 2005.

A handwritten signature in black ink that reads "Mark W. Bennett". The signature is fluid and cursive, with a horizontal line drawn underneath it.

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA